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August 4, 2011

VIA ECF

Hon. Michael A. Shipp  
United States Magistrate Judge  
Martin Luther King Federal Building  
50 Walnut Street  
Newark, New Jersey 07102

Re: *Botton v. Ness Technologies, et al.*  
Civil Action No. 11-3950(SRC)

Dear Judge Shipp:

We are co-counsel for Plaintiff in the above matter. We write in response to defendants' letter dated August 3, 2011, providing the Court with a copy of the order in the Delaware Court of Chancery proceedings styled *In re Ness Technologies, Shareholders Litigation*: C.A. No. 6529-VCN (the "Delaware Action").

It is appropriate to also provide your Honor with plaintiffs' motion to expedite discovery in the Delaware Action (attached) as well as the transcript for said proceeding (attached). We note that plaintiffs in the Delaware Action did not argue at their hearing nor articulate in their papers why free cash flows for Ness Technologies should be provided to Ness Technologies shareholders and they failed to raise the legal arguments put forth before this Court under *Maric Capital Master Fund, Ltd. v. Plato Learning, Inc.*, 11 A.3d 1175, 1178 (Del. Ch. 2010) ("the proxy statement selectively disclosed projections relating to PLATO's future performance. In particular, the proxy statement for some inexplicable reason excised the free cash flow estimates ... This is odd. ... in my view, management's best estimate of the future cash flow of a corporation that is proposed to be sold in a cash merger is clearly material information."); *see also Nichting*, 2011 U.S. Dist. LEXIS 76739, at \*17, n.16 ("The Court notes that upon initial review, it smacks of materiality that a voter be made aware of the Company's cash flow projections in order to make an informed decision.").

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This is not a criticism of plaintiffs in the Delaware Action but a critical distinction in the manner in which the claims have been prosecuted before this Court as opposed to the Delaware Action. Accordingly, Plaintiff hereby requests that his motion to expedite be granted, at least with respect to his free cash flows argument and similar discovery as it was ordered in the *Nitching* case raising identical issues as here.

Thank you for your continued attention to this matter. If Your Honor has any questions, we are available at your convenience.

Respectfully submitted,

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO

/s/ James E. Cecchi

JAMES E. CECCHI

cc: All Counsel (via ECF)